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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,459	06/23/2003	David P. Paradis	727002001-3227	2650

62993 7590 05/16/2007  
BUCHALTER NEMER  
18400 VON KARMAN AVE.  
SUITE 800  
IRVINE, CA 92612

EXAMINER
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MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/602,459

Applicant(s)

PARADIS ET AL.

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. The amendment dated 4/26/2007 has been fully considered and entered into the Record.

Claims 1-26 and 57 remain active.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-26 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb et al. (US 3,608,297) in view of Miller et al. (US 2003/0165656).

- a. Cobb et al. teach a polyamide yarn suitable for use in carpets comprising 85% of filaments containing 1% titanium dioxide and 15% of filaments containing 0.02% titanium dioxide (col. 2, lines 12-14). The polyamide yarns may be nylon (Table 1). The filaments of each titanium dioxide group may have different denier (claim 8). The applied invention teaches the use of 12 denier fibers (Table 5). The invention of Cobb et al. is silent as to the use of binder fibers.

- b. Miller et al. teach a carpet fiber and binder material comprising binder fibers of nylon 6, nylon 66, and nylon 12 [0023] and carpet fibers of denier of at least 1 and may be made of polyester [0021]. The carpet fibers may include additives such as pigments, dyes and optical brighteners [0021]. The carpet fibers are staple fibers [0003] and the invention more preferably comprises 1-5 weight percent binder fibers [0035].

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c. Since Cobb et al. and Miller et al. are from the same field of endeavor (i.e. nylon carpet fibers), the purpose disclosed by Miller et al. would have been recognized in the pertinent art of Cobb et al.

d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have added the binder fibers to the invention of Cobb et al. with the motivation of having all the benefits of staple fiber with the benefits of continuous filament yarn carpet as disclosed by Miller et al. [0014].

### ***Response to Arguments***

3. Applicant's arguments filed 4/26/2007 have been fully considered but they are not persuasive.

4. Applicant argues that Examiner has failed to provide adequate motivation to combine the Cobb et al. and Miller et al. references and has relied upon improper hindsight to combine said references. The Cobb et al. reference is primarily concerned with the aesthetics and soil-ability of yarn that may be used in carpet. Miller et al. outline the disadvantages of using either staple fibers or continuous filaments in the production of carpets [0008-0013]. Miller et al. overcomes these disadvantages through the use of binder fibers [0014-0017]. Motivation for the use of binder fibers comes from the secondary reference, Miller et al., not Cobb et al.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is 571.272.2423. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571.272.1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mdm

*mdm*  
*primary  
patent  
examiner*